UNITED STATES
v.
J. D. WILSON

IBLA 78-455 Decided November 6, 1979

Appeal from decision of Administrative Law Judge Robert W. Mesch declaring the Lottie No. 5 lode mining claim null and void for lack of discovery of a valuable mineral deposit. Arizona 9841.

Affirmed.

1. Act of June 18, 1934 -- Indian Lands: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Special Acts

   The collection of a yearly rental pursuant to the provisions of 43 CFR 3825.1(b) for a mining claim situated within the Papago Indian Reservation in no way presages the existence of a valid mining claim based on the discovery of a valuable mineral deposit.

2. Mining Claims: Generally -- Mining Claims: Contests

   The Department of the Interior has the right to contest the validity of an unpatented mining claim at any time until patent issues.

3. Administrative Procedure: Hearings -- Evidence: Credibility of Witnesses -- Mining Claims: Contests -- Mining Claims: Hearings -- Rules of Practice: Government Contests

   It is the responsibility of a mining claimant to present evidence supporting his allegation of bias on the part of Government mineral examiners testifying as to the

validity of his claim in a contest proceeding, and a showing of Department affiliation does not discredit a witness.

4. Constitutional Law: Due Process -- Mining Claims: Contests -- Rules of Practice: Government Contests

The procedures of the Department of the Interior in mining contests where a mining claimant is afforded notice and an opportunity to be heard comport with the requirements of due process under the United States Constitution.

APPEARANCES: J. D. Wilson, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

J. D. Wilson has appealed from a decision of Administrative Law Judge Robert W. Mesch, dated April 26, 1978, declaring the Lottie No. 5 lode mining claim null and void for lack of discovery of a valuable mineral deposit. The subject land is situated in T. 15 S., R. 3 E., Gila and Salt River meridian, Arizona, within the Papago Indian Reservation.

On September 15, 1977, the Bureau of Land Management (BLM), on behalf of the Bureau of Indian Affairs, Department of the Interior, initiated a contest complaint charging that:

1. Valuable minerals have not been found within the limits of the Lottie No. 5 lode mining claim so as to constitute a valid discovery within the meaning of the mining laws.

2. The land embraced within the claim is non-mineral in character.

[1] The Administrative Law Judge held that appellant had not proven that a valuable mineral deposit presently exists on the subject claim and that it existed at the time of the withdrawal of the land from mining location under the Act of May 27, 1955, 25 U.S.C. § 463 (1963).

The Judge's decision sets out a summary of the pertinent evidence and the applicable law as well as his findings and conclusions. We are in agreement with his finding as to the invalidity of the claim.

In his statement of reasons for appeal, appellant contends that (1) the collection of rent, authorized by BLM, indicates the existence of a valid mining claim; (2) the claim should have been

declared null and void at the time of the prior BLM examination (approximately 1960) "if it was not valid"; (3) the testimony of the Government mineral examiners was biased; and, (4) he has been deprived of property without due process of law in violation of the United States Constitution.

The collection of a yearly rental as to the subject land in no way presages the existence of a valid mining claim based on the discovery of a valuable mineral deposit. It merely indicates compliance with 43 CFR 3825.1(b) which requires the locator of a mining claim within the Papago Indian Reservation to furnish:

> [T]o the superintendent or other officer in charge of the reservation * * * a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced in the location for deposit with the Treasury of the United States to the credit of the Papago Tribe as yearly rental.

Failure to pay the yearly rental will be "deemed sufficient grounds for invalidating the claim." 43 CFR 3825.1(b). E.g., Louis B. Ellsworth, Jr., 33 IBLA 26 (1977). Nevertheless, a mining claimant must also prove the existence of a valuable mineral deposit in order to prevent invalidation of his claim.

[2] As to appellant's contention that the claim should have been declared null and void at the time of the prior BLM examination (approximately 1960) if it was indeed invalid, the Department of the Interior has the "right to determine the validity of an unpatented mining claim at any time until patent issues." United States v. Johnson, 23 IBLA 349, 353 (1976). As was stated in Cameron v. United States, 252 U.S. 450, 460 (1920): "A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws." See also Brattain Contractors, Inc., 37 IBLA 233 (1978).

[3] On the question of bias in the testimony of the Government mineral examiners, it is the responsibility of a mining claimant to present evidence supporting his allegation of bias on the part of the Government mineral examiners testifying as to the validity of his claim. Cf. United States v. Kingdon, 36 IBLA 11 (1978). Such a showing will be considered in determining whether the Government has made out a prima facie case of the lack of discovery.

Appellant has offered no evidence to support his allegation of bias other than to point out that two of the Government mineral examiners were either working for the Bureau of Indian Affairs or a BLM representative for the Bureau. Departmental affiliation does not discredit the witnesses. See United States v. Stevens, 14 IBLA 380,

386, 81 I.D. 83, 85 (1974). The prima facie case presented by the Government was not overcome.

[4] In conclusion, appellant makes a broad allegation that he has been deprived of property without due process of law in violation of the United States Constitution. We find no such deprivation. The procedures followed in mining contests where the mining claimant is afforded notice and an opportunity to be heard comport with the requirements of due process under the United States Constitution. United States v. Stevens, supra. Beyond this it was appellant's responsibility to point out in what specific ways due process has not be observed. He has not done so. Appellant was given adequate notice of and appeared at the hearing into the validity of his mining claim. He was able at that time to present evidence on his own behalf and to cross-examine witnesses for the Government. Accordingly, due process has been satisfied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge